

**IN THE COURT OF SPECIAL JUDGE (PC ACT) (CBI-20) :
ROUSE AVENUE DISTRICT COURT : NEW DELHI**

CBI vs. Neeraj Kumar & Ors.

Case No. RC- DAI-2018-A-0023-DLI dt.31.07.2018

U/s 120-B IPC r/w Sec-7, 7(A), 8, 9,10 and 12 of PC Act 1988

22.09.2020

ORDER

1. This order shall dispose of an application filed by accused Neeraj Walia (A-2) thereby seeking direction for production of order(s)/direction(s) of Review Committee with respect to surveillance order(s) relied upon in the present case.
2. It has been stated in the application that prosecution in order to fasten the liability of committing an offense under the provision of Prevention of Corruption Act had relied upon certain alleged telephonic conversation, obtained by its Special Unit on the basis of certain order (s)/direction(s) of Ministry of Home Affairs, all of which though of different dates but bears an identical number i.e. 14/3/97-CBI.
3. It has been stated that it is a mandate of law that none of the surveillance direction(s)/order(s) acquired the status of a legitimate order(s)/direction(s), passed under Section 5(2) of the

Indian Telegraph Act until they are approved to be legitimate order(s)/direction(s) by the Review Committee under Rule 419 (A)(17) of Indian Telegraph Rules, 1951. It has been further stated that numerous interpretation with respect to such mandate of law, reflected in Rule 419(A)(17) of Indian Telegraph Rules, 1951 had also clarified such mandate of law.

4. It has been further stated that despite expiry of more than two months from the date of each of the direction(s)/order(s) bearing No. 14/3/97-CBI, the persecution agency has not filed the findings of the Review Committee with respect to the confirmation or rejection of such direction(s)/order(s) and further in case of rejection of such direction(s)/order(s), the consequent direction of all record obtained on the strength of the respective direction(s)/order(s).
5. It has been further stated that onus to bring such confirmation of direction(s)/order(s) by the Review Committee is on the CBI/Prosecution Agency and since the CBI had not filed any document on record thus reflecting any approval of such direction(s)/order(s) which are relied upon by the CBI in the instant case, despite expiry of sufficient time as provided in Statute/ Indian Telegraph Rules {Rule 419(A)(17)}, it seems that this direction(s)/order(s) and the material collected therefrom was found to be not legitimate under Rule 419(A)(17) and

therefore only, those documents have not been filed by the prosecuting agency, hence, necessitating filing of the present application.

6. It has been further stated that rejection or confirmation of the direction(s)/order(s) bearing No. 14/3/97-CBI of different dates would be available with the CBI since it has opted to file the Chargesheet on the strength of the direction(s)/order(s) bearing No. 14/3/97-CBI of different dates after the expiry of the Statutory period as contemplated under Indian Telegraph Rules, 1951. Hence, it has been prayed as under:-

(a). Eschew the entire direction(s)/order(s) bearing No.14/3/97-CBI of different dates and the material collected on the strength thereof in view of Rule 419(A)(17) of Indian Telegraph Rules, 1951.

(b). The CBI/Prosecution Agency be directed to place the entire record of the Review Committee, as contemplated under Rule 419(A)(17) with respect to the order (s)/direction(s) bearing No. 14/3/97-CBI of different dates before this Court, prior to taking any cognizance of the alleged evidence collected on the strength of the direction(s)/order(s) bearing No. 14/3/97-CBI of different dates.

7. Prosecution filed reply to the said application thereby submitting that a similar application of the applicant/accused for preservation of certain documents, inclusive of the entire set of electronic data collected by SU on the strength of the orders of Union Home Secretary dated 16.05.2018 and 05.07.2018 pertaining to mobile number 9810083093 has already been dismissed by this court.
8. It has been further stated that CBI has neither collected nor relied upon any document pertaining to direction(s)/order(s) or the findings of the Review Committee with respect to surveillance orders of the Ministry Home Affairs, however, the surveillance orders of Ministry of Home Affairs, which has been relied upon, have already been filed along with the charge sheet and the instant application of the accused/applicant was just another attempt to delay the trial, waste the precious time of this Court and derail the process of law. Hence, it has been prayed that application under consideration be dismissed.
9. Vide order dt 20.01.2020 this Court observed that for the proper disposal of the present application it was necessary to know if the order directing taping of the telephonic conversation was reviewed or not by the Review Committee in terms of Rule 419(A)(17) of the Indian Telegraph Rules, 1951 and has

accordingly directed CBI to give categorical answer on or before next date of hearing as to whether proceedings before Review Committee in terms of Rule 419(A)(17) of Indian Telegraph Rules, 1951 had taken place or not.

10. Pursuant to said direction prosecution/CBI filed reply wherein it is stated that as per provision of Rule 419(A) of Indian Telegraph Rules, Review Committee is constituted by Central Government which reviews all the authorisation and if Review Committee is of the opinion that the directions for interceptions are not in accordance with the provisions of Indian Telegraph Act, it may set aside the directions and order for destruction of the copies of the intercepted message. In the instant case, CBI had not received any direction/communication of Review Committee for destruction of intercepted material.
11. It has been further submitted that interception of telephonic calls of accused person have been made by CBI under authorization of competent authority. Intercepted calls, which are relied upon in this case have incriminating material against the accused persons. The interception of calls including authorization thereof will be proved by prosecution during the trial by the concerned witness.
12. This court has heard Ld. Counsel for applicant Sh. Harsh

Kumar Sharma duly assisted by Counsel for other accused persons as well as Ld. PP for CBI Sh. Pramod Singh and have perused the record carefully.

13. Ld. Counsel for applicant submitted that Rule 419(A)(17) of Indian Telegraph Rules, 1951 made effective from February 1999, confers right on the citizens and protection from illegal and arbitrary invasion into the privacy of any citizen of India. He further submitted that Hon'ble Supreme Court in ***People's Union Civil Liberties v. UOI***; (2013) 10 SCC 1 held that a telephone conversation is an important facet of a man's private life and the right to privacy would certainly include a telephone conversation in the privacy of one's home or in the office. He further submitted that Hon'ble Supreme Court was of the view that telephone tapping would infract Article 21 of the Constitution of India unless it is permitted under the procedure established by law and would also infract Article 19(1)(a) of the Constitution unless it came within the grounds of restriction under Article 19(2). He further submitted that finding that Central Government has not made rules under Section 7(2)(b) of the Indian Telegraph Act, Hon'ble Apex court went on to lay down certain rules in order to establish balance between the exercise of power under Section 5(2) of the Indian Telegraph Act and need for the protection of fundamental right to privacy. Subsequently, Central Government framed rules in exercise of

power under Section 7(2)(b) of the Indian Telegraph Act i.e. Rule 419(A) which *inter-alia* provides for Officer who would authorise interception of message etc., for review of said order by a Review Committee and for destruction of intercepted message etc. if Review Committee finds the order for interception was not in accordance with Section 5(2) of the Act.

14. He further submitted that in the present chargesheet prosecution in order to fasten liability upon the accused persons, has relied upon numerous telephonic conversation between accused *inter se* and other, tapped following authorisation order of Ministry of Home Affairs of different dates but bearing identical No. 14/3/97-CBI. He submitted that although order authorising tapping has been filed but no record has been filed to show whether said order was reviewed by the Review Committee as provided in the Rules 419(A)(2) of the Indian Telegraph Rules, 1951. He submitted that an important right would flow to accused/applicant if Review Committee did not approve of the interception of telephone conversation. Hence, he submitted that application be allowed or in the alternative relying upon ***Vineet Kumar v. CBI; 2019 SCC OnLine Bom 3155*** he submitted that tapped conversation relied upon by the prosecution be eschewed from the collected materials against accused persons assuming that said tapping order was not confirmed and that is why prosecution has not

brought said order on record.

15. Ld. PP for CBI Sh. Pramod Kumar has submitted that Section 419(A)(17) of Indian Telegraph Rules contemplates order by Review Committee for destruction of the copies of the intercepted message or class of messages in the event of Review Committee finding that order permitting interception of message etc. was not in accordance with Section 5(2) of Indian Telegraph Act. He submitted that since no order directing destruction of intercepted message has been received goes to show that order permitting interception of tapping etc. was affirmed. He further submitted that it is always open for the defense to summon at appropriate stage record from Review Committee if defense is of the firm believe that such order was not confirmed. He further submitted that even otherwise it is long settled rule of evidence that method of obtaining incriminating material is irrelevant in criminal trial that is to say that even if incriminating evidence has been illegally obtained same will not affect the admissibility of such evidence. To support his view he has relied upon ***R. M. Malkhani v. State of Maharastra; 1973(1) SCC 345*** and ***Dharambir Khattar v. Union of India & Anr.*** bearing W.P.(Crl) 1582/2007 decided by Division Bench of Hon'ble Delhi High Court on 21.11.2012. Hence, he has submitted that even if Review Committee has not affirmed the order of tapping then

also intercepted conversation would not be eschewed from consideration. He further submitted that operation of judgement in ***Vineet Narain***(supra) has been stayed by Hon'ble Supreme Court and therefore, no reliance could be placed on the same.

16. Since CBI has not placed reliance on the findings of the Review Committee and therefore, admittedly these documents were neither filed on record nor supplied to any of the accused persons.
17. From the contention advanced and reply submitted by CBI/Prosecution particularly the second one filed pursuant to order dt 22.01.2020, it is noticed that there is no dispute with respect to provision of Rule 419(A) and particularly with Rule 419(A)(17) of Indian Telegraph Rule,1951. There is no dispute that order permitting tapping of telephone conversation is required to be sent to Review Committee within 7 working days and Review Committee which sits every two months has to review such order and if such order is not affirmed by Review Committee then the intercepted message/conversation has to be destroyed.
18. It is the contention of the prosecution that since CBI has not received any order for destruction of intercepted material

therefore it assumes that order permitting tapping of telephone conversation must have been approved. But what if such order mischievously not placed on record or not reached the agency for any reason whatsoever? - as contended by Counsel for applicant. Fairness in investigation, enquiry and trial is the cornerstone of criminal justice delivery system. It should not only be fair but should also appear to be fair. Thus, fairness demands that order of the Review Committee be placed on record. It is further noticed that non-confirmation of order permitting tapping of telephone conversation between accused *inter-se* and with others apparently appears to have far reaching effect in view of Rule 419(A)(17) of Indian Telegraph Rules.

19. Therefore, the question as to whether non-confirmation of tapping order would result into eschewing of intercepted message or not as in criminal trial illegality in the source of obtaining incriminating material has nothing do with admissibility of evidence, is left open and shall be taken up after order of Review Committee as contemplated under Rule 419A of Indian Telegraph Rules, 1951, is placed on record because all controversy will settle down if it is shown that Review Committee has confirmed the order permitting surveillance of telephone number involved in the present case.

20. Before parting it must be clarified that placing order of Review Committee on the record would have sufficed the purpose but Ld. Counsel for applicant in support of his contention has also filed copy of order dt 03.03.2019 passed by a Delhi Court under similar circumstance and while perusing said order attention of this Court accidentally fell on the fact that therein also interception order though of different date has been alleged to bear No. 14/3/97-CBI, however, in the present case also the interception order though of different dates bear same number i.e. 14/3/97-CBI. Hence, in view of the above CBI/prosecution is directed to file complete record of Review Committee, after obtaining the same from Review Committee, if not obtained so far, with sufficient clarity that is to say that record must pertain to telephone numbers which were tapped in the present case.
21. In view of the above, application of the accused Neeraj Walia to the extent he seeks direction to CBI/prosecution to placing on record the record of Review Committee in terms of Rule 419(A) (17) of Indian Telegraph Rules, 1951, is hereby allowed and CBI/prosecution is directed to place on record within 30 days entire record of the Review Committee reviewing surveillance order of different dates but bearing identical number 14/3//97-CBI with respect to telephone numbers involved in the present FIR tapped conversation of which were made part of the

present chargesheet and rest of the prayer of the applicant made in the application is left open to be agitated later, if required, by filing separate application once record of the Review Committee is placed on record.

22. With this observation application of the applicant Neeraj Walia stands disposed of accordingly.

(Harish Kumar)
Special Judge (PC Act),
(CBI-20), Rouse Avenue Courts,
New Delhi/22.09.2020

(Announced in Open Court through VC)
(Order contains 12 pages)

CC No. 57/2019 (2/19)
CBI vs. Neeraj Kumar and & Ors.

22.09.2020

Matter is taken up through Video Conferencing (Cisco Webex), hosted by Reader of the Court Sh. Davinder Singh Bisht.

Present (on screen): Shri Parmod Singh, Ld. PP for CBI.

Accused Ajay Chandra (A-4) produced from Tihar Jail no.7.

All other accused are present on bail.

Sh. Sandeep Sharma, Ld. Counsel for (A-1) Neeraj Kumar.

Sh. Vivek Singh, Ms. Vaibhavi Sharma and Sh. Lakshya Prashar Ld. Counsels for A-2 Neeraj Walia.

Sh. Vishal Gosain, Ms. Maulshree Pathak, and Sh. Nikhil Ranjan Ahuja Ld. Counsels for A-3 Ramesh Chandra, A-4 Ajay Chanra and A-5 Upma Chandra.

Sh. Bhavook Chauhan, Ld. Counsel for A-6 Seema Manga.

Sh. Vaibhav Tomar, Ld. Counsel for A-7 M/s Unitech Ltd.

Sh. Davinder Singh Bisht, Reader, Sh. Kripal Singh Sajwan, Sr.P.A, Ms. Gurmeet Kaur, PA, Sh. Hardeep Singh, Ahlmad and Sh. Manish Kumar, Asstt. Ahlmad are also present through Video Conference.

Today matter is listed for order on application filed by accused Neeraj Walia whereby seeking directions to the CBI/prosecution for placing on record order/direction of review committee in terms of Rule 419 (A)(17) of Indian Telegraph Act. Vide separate order of even date, said application has been allowed to the extent it seeks direction to CBI/Prosecution for placing on record direction/order of the Review Committee.

Today another application by way of Email has been filed by (A-1) Neeraj Kumar submitting that complete CCTV Footage has not been supplied to him despite earlier request having been conceded by the prosecution/CBI. Copy of this application be sent to Ld. PP for CBI by way of E-mail who shall file reply on or before next date of hearing with advance copy to the opposite party.



Put up for reply and arguments on this application as well as on pending applications, if any, on **22.10.2020**.

In between date of hearing an application was filed on behalf of (A-5) Upma Chandra seeking permission to travel abroad. Ld. Counsel Sh. Nikhil Ranjan Ahuja today submits that his client does not wish to press this application presently as she doesn't wish to go abroad as of now.

In view thereof, the said application is dismissed as withdrawn.

Screen signed copy of the order be sent to the Computer Branch for uploading the same on the official website of the Court. The signed copy of order shall be placed on record as and when physical hearing of the Court resumes.



(Harish Kumar)

**Special Judge (PC Act) CBI-20,
Rouse Avenue District Court,
New Delhi/22.09.2020**